IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 615 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIRADAS KHIMDAS NIMAVAT(BAVAJI)

Versus

SPECIAL RECOVERY OFFICER

Appearance:

MR AJ SHASTRI for Petitioner

MR VM PANCHOLI, AGP, for Respondents No. 1 to 4

None present for Respondent No. 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/04/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner at one point of time was working with the respondent No.5, Mandli, as President. On 28th

September, 1984, as per his case, he tendered his resignation from the office of the President of the Mandli because of ill health. In July, 1986, the criminal complaint came to be filed against the petitioner along with Lalji Jiva for the offence under sections 406 and 409 read with sections 34 and 114 of the I.P.C., which criminal matter is pending. On 5-6-1987, the Mandli filed a Lavad suit against the petitioner and Lalji Jiva in which ex-parte ad-interim relief was granted and further order has been passed for attachment of the property of the petitioner. The Lavad suit is also stated to be pending. the respondent No.1 issued a notice on 11-2-1992 to the petitioner demanding thereunder Rs.2,61,600/-. Reply has been filed by the petitioner to this notice on 25-2-1992. Another notice was given to the petitioner on 4-3-1992 to which the reply has been submitted on 9-3-1992. Third notice was given on 18-10-1994 to which reply has been filed on 6-11-1994. One more notice was given on 31-12-1994. This has been challenged in this special civil application.

3. Learned counsel for the petitioner raised manifold contentions in support of this writ petition. He contended that when the Lavad suit has been filed by the Mandli for this very amount what for this notice has been given for recovery of the amount. It has next been contended that the criminal case has also been filed.

4. The other side has contended that the amount for recovery of which suit has been filed is different than the amount which is sought to be recovered under the impugned notice by the respondent No.1.

5. However, I do not consider it to be appropriate to go on and decide all these questions of facts because in the facts of this case, this notice may only be treated to be a show cause notice to the petitioner and the petitioner is directed to file a detailed reply to this show cause notice in which he may raise all of his contentions both factual and legal. The authority concerned, i.e. the respondent No.1 shall decide the matter finally and shall pass a reasoned order, copy of which may be sent to the petitioner by registered post A.D.. This exercise has to be completed within a period of two months from the date of receipt of writ of this order. Rule and special civil application stand disposed of accordingly with no order as to costs.

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zgs/-